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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-11 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 STR-04

JUSE-00 ITC-01 FTC-01 AF-06 ARA-06 SS-15 NSC-05 L-03

H-02 PRS-01 PA-01 USIA-06 OIC-02 AGR-05 /134 W

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FM USMISSION OECD PARIS

TO SECSTATE WASH DC 0771

INFO AMEMBASSY LIMA

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PASS: EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR LANGE

E.O. 11652: N/A

TAGS: EFIN, EINV, OECD

SUBJECT: OECD DISCUSSION OF DEVELOPED COUNTRY POSITIONS
FOR MEETING OF UN TRANSNATIONAL CORPORATION COMMISSION,
MARCH 1-12, LIMA

REF: OECD PARIS 5022

1. SUMMARY: FOLLOWING FEB 16-17 MEETING OF DRAFTING
GROUP OF OECD INVESTMENT COMMITTEE (CIME), REPORTED
REFTEL, US, UK, FRG, NETHERLANDS, DENMARK, SWITZERLAND
DELEGATES AND SECRETARIAT (VOGELAAR) MET ON MORNING
OF FEBRUARY 18 TO DISCUSS FORTHCOMING LIMA MEETING.
BASIC SIMILARITY OF VIEWPOINT REVEALED ON SUBSTANCE
BETWEEN FOUR COUNTRIES WHO ACTIVELY PARTICIPATED
(NETHERLANDS AND DENMARK REMAINED SILENT), BUT
SOME DIFFERENCES ON TACTICS. AGREEMENT WAS REACHED
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ON FOLLOWING: (1) TO SUPPORT SAHLGREN'S CONCEPT
OF A CONTINUING WORKING GROUP ON TNC CODE, BUT TO

RESIST ESTABLISHING MORE THAN ONE SUCH GROUP; (2) TO SUPPORT SAHLGREN'S IDEA OF HAVING SECRETARIAT PREPARE STUDY ON ALL ASPECTS OF A CODE AND TO HAVE WORKING GROUP INITIALLY DISCUSS THIS STUDY RATHER THAN BEGIN DRAFTING, AND (3) TO ATTEMPT AVOID CONFRONTATION ON UNRESOLVED ISSUES ON NATURE OF CODE, TRYING TO OBTAIN BROAD TERMS OF REFERENCE FOR WORK PROGRAM, PROVIDED OUR MINIMUM REQUIREMENTS (I.E. POINTS IN SECRETARY'S UN SEVENTH SPECIAL SESSION SPEECH) ARE MADE MATTERS OF RECORD AND GROUP B WOULD NOT BE PRECLUDED FROM LATER RAISING THEM IF NEED BE. END SUMMARY

2. IT WAS GENERALLY AGREED THAT IT WAS POINTLESS AT THIS TIME TO SEEK TO AVOID HAVING UN COMMISSION DEAL WITH TNC CODE OF CONDUCT ON A PRIORITY BASIS. /US POSITION ON CODE, AS ADVANCED BY SECRETARY KISSINGER, WAS SUPPORTED BY OTHERS, INCLUDING POINTS THAT ANY SUCH CODE MUST BE NON-BINDING, DIRECTED TO GOVERNMENTS AS WELL AS TNC'S AND COVERS ALL ENTERPRISES' PUBLIC AS WELL AS STATE, AND BE NON-DISCRIMINATORY.

3. IT WAS ALSO AGREED THAT INTERSESSIONAL WORKING GROUP ON CODE WAS WORKABLE METHOD OF PROCEDURE. FRG AND UK FELT THAT IT WOULD BE USEFUL AND PERHAPS NECESSARY TO HAVE TNC COMMISSION SET TERMS OF REFERENCE FOR WORKING GROUP, INCLUDING ON CONTROVERSIAL ISSUES OF BINDING CHARACTER OF CODE AND TO WHOM IT IS TO BE ADDRESSED. US AND SWITZERLAND FAVORED A LESS CONFRONTATIONAL APPROACH, WITH WORKING GROUP INITIALLY CONDUCTING THOROUGH REVIEW OF CODE-RELATED ISSUES, PERHAPS ON BASIS OF DRAFT BY INFORMATION AND RESEARCH CENTER, AND THEN EITHER TRYING TO DETERMINE ITS OWN MANDATE OR ELSE REPORTING BACK TO TNC COMMISSION AFTER ANALYSIS COMPLETE.

4. FRG THOUGHT IT WOULD BE USEFUL TO HAVE MANDATE OF TNC WORKING GROUP CALL FOR ANALYSIS OF ECONOMIC PHENOMENA BEFORE DEALING WITH MORE CONFRONTATIONAL AND POLITICAL LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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TICAL SUBJECTS. US AGREED THAT MORE FUNDAMENTAL POINTS, SUCH AS CALVO CLAUSE VS. INTERNATIONAL LAW, SHOULD BE AVOIDED, BUT THAT PERHAPS THERE WERE SOME POLITICAL POINTS (I.E. NON-INTERFERENCE IN INTERNAL AFFAIRS) THAT WERE LESS CONTROVERSIAL AND LESS HARMFUL THAN ECONOMIC ISSUES. US DEL THOUGHT, IN ANY EVENT, THAT IF AT ALL POSSIBLE, TNC COMMISSION SHOULD NOT DEAL AT THIS TIME WITH SUCH SUBSTANTIAL MATTERS AS THE COVERAGE OF THE CODE, BUT CONFINE ITSELF TO PROCEDURAL TASKS.

5. ON SUBJECT OF HOW COMMISSION SHOULD USE EXPERTS,
US INDICATED THAT WHILE FINAL POSITION NOT YET
DETERMINED, PRELIMINARY FEELING IS THAT US WOULD NOT
DESIRE TO SEE ESTABLISHMENT OF PERMANENT "GROUP OF EMI-
NENT PERSONS" BUT WOULD PREFER AD HOC USE OF EXPERTS.
OTHER DELEGATIONS HAD NOT YET THOUGHT THROUGH THIS

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H-02 OIC-02 AGR-05 PRS-01 PA-01 USIA-06 /134 W

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QUESTION.

6. US DEL RAISED FOR DISCUSSION IDEA OF PROPOSING AT
LIMA THE DRAFTING OF A TREATY ON CORRUPT PRACTICES, DEAL-
ING ESPECIALLY WITH DISCLOSURE OF PAYMENTS TO AGENTS IN
CONNECTION WITH SALES TO GOVERNMENTS OR WITH MAKING OF
FOREIGN INVESTMENTS WHICH REQUIRE HOST GOVERNMENT APPRO-
VAL. INITIAL REACTION OF UK WAS TO SHOW SOME INTEREST,

WHILE FRG PRONOUNCED STRONG DOUBTS. THE DISCUSSION REFLECTED VARIOUS VIEWPOINTS ON THIS IDEA. POINTS ADVANCED IN FAVOR OF SUCH A TREATY WERE (A) THERE IS, IN PRINCIPLE, COINCIDENCE OF INTEREST BETWEEN DC'S AND LDC'S, (B) IT COULD LEAD TO RECOGNITION OF THE RESPONSIBILITIES OF GOVERNMENTS AS WELL AS OF ENTERPRISES, (C) PUTS PART OF RESPONSIBILITY ON LDC'S AND, (D) AS CORRUPTION IS ON AGENDA ANYWAY, THERE IS NEED FOR DEVELOPED COUNTRIES TO TAKE COMMON POSITION. NEGATIVE ARGUMENTS ADVANCED IN DISCUSSION WERE THAT EUROPEAN BUSINESS WORLD STRONGLY OPPOSES SUCH A TREATY, AS IT WOULD BE A PERMANENT BURDEN ON COMMERCE WHILE NOT CHANGING EXISTING LDC PRACTICES. WORK ON A TREATY IN THIS REGARD COULD UNDERMINE GROUP B POSITION ON ACCEPTING ONLY VOLUNTARY CODES OF CONDUCT. BANK SECRECY LAWS AND OTHER LEGISLATION COULD MAKE TREATY ON CORRUPT PRACTICES DIFFICULT TO ENFORCE. GENERAL IMPRESSION GAINED WAS THAT ANY US PROPOSAL OF TREATY IN CORRUPT PRACTICES COULD RAISE SERIOUS ISSUES WITH EUROPEAN ALLIES.

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MENTS ADVANCED IN DISCUSSION WERE THAT EUROPEAN BUSINESS WORLD STRONGLY OPPOSES SUCH A TREATY, AS IT WOULD BE A PERMANENT BURDEN ON COMMERCE WHILE NOT CHANGING EXISTING LDC PRACTICES. WORK ON A TREATY IN THIS REGARD COULD UNDERMINE GROUP B POSITION ON ACCEPTING ONLY VOLUNTARY CODES OF CONDUCT. BANK SECRECY LAWS AND OTHER LEGISLATION COULD MAKE TREATY ON CORRUPT PRACTICES DIFFICULT TO ENFORCE. GENERAL IMPRESSION GAINED WAS THAT ANY US PROPOSAL OF TREATY IN CORRUPT PRACTICES COULD RAISE SERIOUS ISSUES WITH EUROPEAN ALLIES.

7. FINAL ISSUE DISCUSSED WAS WHETHER GROUP B SHOULD AT LIMA TABLE A SET OF MINIMUM REQUIREMENTS FOR WORK PROGRAM ON CODE TO BALANCE THOSE SUBMITTED BY THE G-77 AT FIRST TNC COISSION MEETING. IT WRS AGREED THAT WOULD BE USEFUL TO HAVE SUCH A SET OF REQUIREMENTS FOR USE BUT ONLY IF NECESSARY. FRG DEL WILL WORK ON A DRAFT SET OF PRINCIPLES, AND US DEL SAID SOME WORK WOULD BE DONE BY US IN THIS AREA AS WELL.

8. ALL REPS AGREED THAT IT WAS IMPORTANT NOT OPENLY TO REFER TO WORK ON OECD CODE OF CONDUCT FOR MNE'S, AS WORK NOT COMPLETE AND OECD ITSELF SHOULD NOT APPEAR TO BE CONFRONTING OR PRE-EMPTING UN WORK COMMENT: IT IS TO BE HOPED THAT VOGELAAR, WHO MAY GO TO LIMA TO REPRESENT OECD SECRETARIAT, UNDERSTOOD THESE VIEWS, ESPECIALLY AS HIS OBSERVATIONS ON THE SUBJECT WERE NOT PARTICULARLY HELPFUL. MISSION WILL FOLLOW-UP WITH OECD SECRETARIAT ON THIS POINT. END COMMENT.

9. GROUP ALSO AGREED THAT DESIRABLE TO HAVE CLOSE DEVELOPED COUNTRY COORDINATION AT LIMA AND US DEL PROMISED TO SEE WHETHER AMEMBASSY LIMA COULD MAKE AVAILABLE ROOM FOR CAUCUSING OF DEVELOPED COUNTRIES.

10. AMEMBASSY LIMA: WOULD APPRECIATE YOUR ADVISING RICHARD SMITH (EB/IFD/OIA) BY TELEGRAM AS TO AVAIL-

ABILITY OF ROOM MENTIONED IN PARA 9 ABOVE.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING AGENDA, INVESTMENTS, MULTINATIONAL CORPORATIONS, INDUSTRIALIZED NATIONS, DIPLOMATIC DISCUSSIONS, FOREIGN POLICY POSITION
Control Number: n/a
Copy: SINGLE
Draft Date: 23 FEB 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976OECDP05373
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760067-0761
From: OECD PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760223/aaaaatya.tel
Line Count: 231
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 OECD PARIS 5022
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 16 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16 APR 2004 by greeneet>; APPROVED <06 JUL 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: OECD DISCUSSION OF DEVELOPED COUNTRY POSITIONS FOR MEETING OF UN TRANSNATIONAL CORPORATION COMMISSION
TAGS: EFIN, EINV, OECD, CIME
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006